

ARIZONA STATE SENATE

46TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON COMMERCE

DATE: March 19, 2003

TIME: 9:00 a.m.

ROOM: SHR 3

CHAIRMAN: Senator Leff

VICE CHAIRMAN: Senator Blendu

ANALYST: Todd Madeksza

**COMMITTEE
SECRETARY:** Nancy L. DeMichele

**ASSISTANT
ANALYST:** Brandy Martin

INTERN: Sophie Rigollet

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Allen	X			HB 2051	DP
Senator Arzberger	X			HB 2084	HELD
Senator Cheuvront	X			HB 2111	DP
Senator Giffords	X			HB 2145	DP
Senator Martin	X			HB 2186	HELD
Senator Soltero	X			HB 2403	DP
Senator Tibshraeny	X			HCR 2028	DP
Senator Blendu, Vice Chair	X				
Senator Leff, Chair	X				

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Elaine Richardson	Commissioner, State Real Estate Department	CONFIRMATION
Margie Emmermann	Director, Office of Tourism	CONFIRMATION
Stephen Ahearn	Director, Resident Utility Consumer Office	CONFIRMATION
Susan Lee Brenton	Member, Board of Manufactured Housing	CONFIRMATION
Neal Haney	Member, Board of Manufactured Housing	CONFIRMATION

Chairman Leff called the meeting to order at 9:12 a.m., and roll call was taken.

APPROVAL OF MINUTES

Senator Leff announced, without objection, the minutes of the meetings of February 26 and March 5, 2003, are approved as distributed.

EXECUTIVE NOMINATIONS

Elaine Richardson - Commissioner, State Real Estate Department – CONFIRMATION

Elaine Richardson stated she has been a licensed real estate agent and broker since 1986, and has been in the State Legislature for ten years both as a Representative and Senator. She noted she was recognized as Legislator of the Year in 1996 by the Arizona Association of Realtors.

Senator Leff announced the individuals who registered their position on the executive nomination (Attachment A).

Senator Blendu moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Elaine Richardson as Commissioner of the State Real Estate Department. The motion CARRIED by a roll call vote of 8-0-1 (Attachment 1).

Margie Emmermann - Director, Office of Tourism – CONFIRMATION

Margie Emmermann stated she looks forward to taking the Office of Tourism to the next level. She commented the tourism competition is fierce and the industry needs to work together in these uncertain times to be more strategic regarding product offerings. She outlined the goals for the future, and said she looks forward to working closely with the industry to achieve those goals.

In response to Senator Chevront regarding travel in these uncertain times, Ms. Emmermann stated an initial meeting took place with industry partners across the State and various travel strategies have been discussed. In response to Senator Allen, Ms. Emmermann commented on the various elements of commerce and tourism during the current budget crisis. In response to Senator Tibshraeny, Ms. Emmermann outlined the funding sources of the tourism budget, and efforts undertaken with collaborative partnerships.

Senator Leff announced the individuals who registered their position on the executive nomination (Attachment A).

Senator Blendu moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Margie Emmermann as Director of the Office of Tourism. The motion CARRIED by a roll call vote of 8-0-1 (Attachment 2).

Stephen Ahearn - Director, Resident Utility Consumer Office – CONFIRMATION

Stephen Ahearn stated the Resident Utility Consumer Office (RUCO) consists of a group of eleven people representing residential utility user interests before the Arizona Corporation Commission (ACC). He distributed a pamphlet describing RUCO (Attachment B). Mr. Ahearn said he is a native

Arizonan and he provided background information regarding his education and work experience. He said he joined the public service sector in 1990 at the Energy Office of the Arizona Department of Commerce. He indicated his specific work experience includes energy, energy regulation, energy policy, conservation, efficiency and other responsibilities of RUCO. He said he formerly worked at the ACC and also received training in telecommunications policies.

Senator Blendu moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Stephen Ahearn as Director of the Residential Utility Consumer Office. The motion CARRIED by a roll call vote of 8-0-1 (Attachment 3).

Susan Lee Brenton – Member, Board of Manufactured Housing – CONFIRMATION

Susan Lee Brenton stated she has served as Executive Director of the Arizona Association of Manufactured Homeowners since 1986. She said she served one year on the Board of Manufactured Housing in 1989. She noted she presently serves on the Manufactured Housing Consensus Committee, which is a national committee that works with the federal Department of Housing and Urban Development (HUD) to develop standards to which manufactured homes must be built. She noted she has had seventeen years' experience in the industry.

Senator Blendu moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Susan Lee Brenton as a Member of the Board of Manufactured Housing. The motion CARRIED by a roll call vote of 8-0-1 (Attachment 4).

Neal Haney – Member, Board of Manufactured Housing - CONFIRMATION

Neal Haney stated he is currently in his fifth year as President of the Manufactured Housing Communities of Arizona, Inc., which is a park owners association, and he has served on that board since 1991. He said he is managing member of NTH Property Management, and also has a mobile home dealer's license.

Senator Blendu moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Neal Haney as a Member of the Board of Manufactured Housing. The motion CARRIED by a roll call vote of 8-0-1 (Attachment 5).

CONSIDERATION OF BILLS

HB 2084 – state claims to streambeds – HELD

HB 2186 – life insurance; annuities; replacement – HELD

Senator Leff announced HB 2084 and HB 2186 will be held for a future agenda at the request of the bill sponsors in order to work on further details.

HB 2403 – technology transfer; university research development (now: regents, joint venture agreements) – DO PASS

Sophie Rigollet, Senate Commerce Intern, explained HB 2403 establishes a process for the Arizona Board of Regents (ABOR) and the institutions under its jurisdiction to hold an equity position

in a company for the technological transfer of intellectual property or technology developed and licensed by the institution. She said the State's general electorate enables HB 2403 upon the passage of HCR 2028. Ms. Rigollet indicated a Martin amendment is being proposed. Senator Leff stated Senator Martin is not present at the time, and that she would prefer to wait on the amendment until a consensus has been reached by the stakeholders.

Margot Wuebbels, Governor Napolitano's Office, stated the Governor supports both HB 2403 and HCR 2028. She said the Governor believes these are both important measures to help universities and businesses to participate in technology and intellectual property being created at the universities to facilitate the marketplace. She commented that both measures are consensus bills, and urged the Committee to pass them without any amendments.

In response to Senator Blendu, Ms. Wuebbels stated that there is no funding anticipated from the State general fund for either of these measures.

Senator Martin asked Ms. Wuebbels to comment on the opposition to the Martin amendment. Ms. Wuebbels stated that the two measures are consensus bills, and all the language was agreed upon by a large contingency of people. She said in order to amend the bills, further discussions would need to take place with the stakeholders for a consensus. She indicated she would also need to discuss the language with the bill sponsor. Senator Martin asked Ms. Wuebbels whether she has a recommendation on the amendment. Ms. Wuebbels said at this point the Governor's office opposes the amendment; however, if all stakeholders reach an agreement then the Governor's office would move forward. She indicated that the current language in the bills is the agreed-upon language, which passed the House of Representatives.

Senator Leff said she does not wish to hold the bill, and indicated a floor amendment could be introduced on the floor if consensus is reached. In response to Senator Allen, Senator Martin explained the reasons for the amendment. Senator Martin said he is concerned with the liability issues, and he will hold the amendment if he could be included in the discussions with stakeholders.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Senator Blendu moved HB 2403 be returned with a DO PASS recommendation.

Senator Leff announced that the Martin amendment dated 3/18/03 at 4:57 p.m. will not be offered today (Attachment C).

Senator Giffords explained her vote. She said she believes this measure will move the State forward, and she will vote "aye."

Senator Martin explained his vote. He said he would like to work with all stakeholders, and will vote "aye."

Senator Tibshraeny explained his vote. He said it is good to see Arizona coming into the 21st century on these issues and will vote "aye."

Senator Blendu explained his vote. He said as public policy makers, it is important to address any risk associated with new measures. He stated he will vote "aye" to move the bill along, but believes there is more work to be done on this issue.

The motion CARRIED by a roll call vote of 9-0-0 (Attachment 6).

HCR 2028 – technology transfer; educational institutions – DO PASS

Brandy Martin, Commerce Assistant Research Analyst, explained HCR 2028, if approved by the voters, exempts ABOR and the institutions under its jurisdiction from the ownership interest prohibition of the State Constitution. She said this measure will allow them to have an ownership interest in a company or corporation, if it is obtained as a result of an interest in technology or the creation of intellectual property. She indicated a Martin amendment dated 3/18/03 at 4:43 p.m. is being proposed. Senator Leff said this measure is a companion bill to HB 2403, and she believes Senator Martin will not be offering his amendment today (Attachment D). Senator Martin said that is correct.

**Senator Blendu moved HCR 2028 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 9-0-0 (Attachment 7).**

HB 2051 – board of education; administrative duties – DO PASS

Kimberly Yee, Education Research Analyst, explained HB 2051 removes stipulated administrative duties of the State Board of Education (SBE) for intergovernmental agreements (IGA) and contested cases or appealable agency actions.

Christy Farley, Executive Director, SBE, testified in support of HB 2051. She stated that her understanding is that any issues dealing with administrative hearings and the Office of Administration Hearings (OAH) process are to go through the Commerce Committee. She said SBE is requesting changes to put the SBE administration hearings back under the OAH process for the majority of the hearings. Ms. Farley stated that discussions have taken place with school districts and it was agreed that a more efficient process would be to have one administrative law judge doing findings of fact versus an entire board. She said the other recommendation in this measure is that school districts that enter into IGAs with each other would not have to go to the State boards to have the IGAs approved. However, she said certain requirements would need to be followed. She said these recommendations will streamline the responsibilities of SBE to allow more time to be focused on priority issues.

In response to Senator Leff, Ms. Farley stated that certification issues will continue to be the responsibility of SBE. She explained that SBE has established a Professional Practices Advisory Committee comprised of professionals in the education community, human resources people, teachers, and superintendents who serve as a governing entity that will make recommendations to SBE on any disciplinary actions. Ms. Farley commented that the Arizona Education Association (AEA) and other parties are comfortable with that system, which appears to be working well.

**Senator Blendu moved HB 2051 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 8-0-1 (Attachment 8).**

HB 2111 – foreclosures and trustee sales – DO PASS

Todd Madeksza, Senate Commerce Research Analyst, explained HB 2111 makes numerous changes, additions and clarifications to current law regulating trustee sales and recordkeeping requirements. He stated that the measure prohibits the delegation of responsibilities to people other

than those who could qualify as a trustee. He said there is no anticipated fiscal impact to the State general fund associated with this measure.

Representative Tully, bill sponsor, stated that HB 2111 was brought forward by the Trustee Association. He said one of the reasons he was interested in this measure is because it seeks to overturn a recent court decision by the Arizona Supreme Court, and he explained the circumstances. He said the other items in the bill are basically technical.

Senator Blendu pointed out that a homeowner whose property is being foreclosed by the lender due to nonpayment generally will lose all the equity invested over the years in a trustee sale. He asked Representative Tully if he would be amicable to an amendment that would preclude this type of situation from occurring. Representative Tully replied he is not aware that this type of situation is occurring. He said a problem occurs when the parties hire different appraisers and variations occur in the value of the property, which slows down the trustee sale process. He said if this type of situation is widespread, then perhaps separate legislation should be considered. Representative Tully explained the process leading up to a trustee sale.

Senator Chevront stated he is concerned with the 20% benchmark figure imposed by the Supreme Court. He said the person who has the major equity in the home will receive nothing because the bank will not only receive the money owed on the mortgage, but could also receive the equity that the homeowner lost. Representative Tully commented that he believes it is not the court's role or discretion to determine the percentage, but rather the Legislature's job to determine the benchmark or procedure to protect the consumer, if that is the problem. Senator Chevront commented that whether it is the role of the court or not, it is the law currently.

Senator Blendu commented an equitable conclusion has to be reached because the individual who has done nothing wrong becomes the victim of the process. Representative Tully commented that committee meetings were held, but no one appeared to voice their concerns with the current procedure. Senator Chevront said that probably most people in these circumstances were not aware that this measure is going forward.

Lee Miller, Lobbyist, Arizona Trustees Association, testified in support of HB 2111. He stated the organization comprises approximately 100 firms in the State whose business is foreclosures and trustee sales. He said the items being addressed are the changes proposed in Arizona Revised Statutes (A.R.S.) 33-803 and the new section A.R.S. 33-803.01, non-delegation of a trustee's duties. He said previous legislation determined that a foreclosure trustee had to qualify by being a real estate broker, insurance agent, attorney, or somebody who already has some type of license from the State. Conversely, in California there is nothing to prohibit anyone from being a foreclosure trustee. Mr. Miller explained that today there are approximately 5,000 organizations making loans, but almost all loans end up in the hands of a dozen gigantic loan servicing corporations. He pointed out that A.R.S. 33-803 and A.R.S. 33-803.01 proposes that anyone who acts as a trustee at an absolute minimum must be able to tell the borrower how much money is needed to save the home. Additionally, if the borrower puts the money on the table, the trustee has to take it. He said that issue is a very important part of the bill.

Mr. Miller commented there are a number of clarifications in the bill. He said the main question on the bill at the House of Representatives was whether it is okay to schedule a trustee sale on Sunday. He said by separate statute, every Sunday is declared a legal holiday in the State. He said the other substantive part of the bill is the language in A.R.S. 33-811. He indicated it is not a standard practice of a lender to obtain an appraisal prior to a trustee sale because it is not a relevant piece of

information to the lender. He explained the lender merely wants to know how much money is owed. He said if the case law is kept in place, it will establish a battle of appraisals. He said a likely scenario is when the homeowner becomes ill and the bank starts the process of a foreclosure sale. In the instance of the 20% test, the lender will have to order an appraisal and will have to charge the homeowner the cost of an appraisal. He said generally someone in the homeowner's family or friends will resolve the situation prior to the foreclosure sale. However, additional costs will have been attached to the amount owed by the homeowner because an appraisal was ordered.

Mr. Miller indicated there are some government guaranteed lending programs, such as the Federal Housing Administration (FHA), where a lender is prohibited by federal regulation from bidding more than what is owed. He said generally FHA will encourage the lender to make reasonable efforts to collect the loan without incurring unnecessary costs in the process.

Mr. Miller stated that the Trustee Association is willing to talk through some of the issues and perhaps language can be included that would bring some comfort level to the concerns raised. He urged support of the bill in Committee and indicated he will discuss these concerns with Senator Arzberger and anyone else to resolve the issues.

In response to Senator Chevront, Mr. Miller stated that after appraisals have been ordered and properties are foreclosed, the lender hires a real estate broker and the properties are marketed. He said a relationship takes place with a realtor, and an appropriate listing price for the property is determined. He said typically a full-blown appraisal is not obtained, although an estimate of the value of the property is determined after foreclosure.

Senator Chevront wanted to know who would help those individuals who have equity in their home, but may not have a relative or friend to help them at the time of possible foreclosure. Mr. Miller acknowledged it is possible that the scenario described could occur; however, the requiring of appraisals will impose additional costs on individuals. He said that very few foreclosures have an 80% equity. In response to Senator Chevront, Mr. Miller said that overturning the decision by the Supreme Court would not have a major impact on the trustee sale industry.

Senator Blendu commented that he supports the bill except for the 20% issue, and the real victims in this situation are individuals who have a significant amount of equity in their homes and will lose that equity upon foreclosure. Mr. Miller said he would refer that comment to the Bankers Association.

Tanya Miller, Arizona Bankers Association, testified in support of HB 2111. She explained the process that takes place by a lender after the foreclosure process. She said after the property has been foreclosed upon, the bank will contact a realtor who will provide a "broker's opinion of value," rather than a full-blown appraisal. Ms. Miller pointed out that the Supreme Court has adopted the novel approach of using the 20% threshold, which has only been adopted in one other state. She commented that banks are not in the business of foreclosing homes and would prefer to have the homeowner stay in the home. She said the foreclosure process sometimes takes months and during that time a bank will work with borrowers to assist them in payment schedules. She indicated that the number of foreclosed homes is small because generally people are able to work out payment schedules. She said if a payment schedule cannot be accomplished, there are other options available. She noted that the homeowner could sell the home on the open market prior to foreclosure and maintain a good portion of the equity.

In response to Senator Blendu, Ms. Miller commented that it is unlikely a homeowner would wait until the last minute prior to foreclosure proceedings to place the home on the open market for sale. She

said she is not sure of the latitude that banks would take in that situation because notices would have been processed on the foreclosure sale. Senator Blendu said rather than take more time at this point, he would like to work with the parties involved to arrive at an equitable resolution, and will offer a floor amendment. Ms. Miller said she will also be happy to work with the parties. In response to Senator Soltero, Ms. Miller said assistance to the homeowner will vary from lender to lender; however, the institutions are in contact with the homeowner in these situations.

Vic Kamber, testified as neutral on HB 2111; however, he said he has concerns regarding the postponement dates. He said he is a real estate broker and practitioner and works with beneficiaries, trustees and trustors on a daily basis. He indicated currently he is involved with over 68 trustees, who voluntarily provide postponement dates whenever a sale is postponed. He noted the trustees do this because it benefits the beneficiary and the trustor by increasing the possibility of excess funds that the seller could claim. He noted that there are four trustees who do not provide postponement dates. He explained the process of the postponement date, and said he believes the law needs to be changed for the benefit of the beneficiary and the trustor. Mr. Kamber commented that his other concerns deal with the reinstatement amounts and payoff figures, which are promptly needed.

Mr. Miller responded to Mr. Kamber's concerns. He said there are probably many other issues and concerns that could have been included in the bill, but the issues in the bill are considered to be the most important. He referred to the postponement issue and said the trustee is required to appear at the date and time of the original notice and announce that the sale is postponed to another certain date and time. Senator Blendu commented that Mr. Kamber indicated in his testimony that it is difficult to find out the postponement date. Mr. Miller responded that in addition to the statutory obligation, every trustee sale notice contains the name and telephone number of the trustee. He said the reinstatement figure issue could be best addressed by the lenders. However, statutorily at an absolute minimum, the lender has to announce its credit bid at the sale. He said if this bill passes, the trustee will be required to have the reinstatement figure available for the public on day one of the trustee sale process.

In response to Senator Giffords, Mr. Miller said the trustee should provide the postponement date although the trustee is not required to do so. He said if the Committee would like to include language that the trustee is required at all times to provide the public with the date and time of a particular sale, he would not object.

Senator Leff stated she would like to move the bill out of Committee and have the interested parties work on the proper language for the floor.

Senator Blendu moved HB 2111 be returned with a DO PASS recommendation.

Senator Arzberger explained her vote. She stated she would like to work with Senator Blendu and other interested parties on a possible amendment. She said at this time she will vote "aye."

Senator Chevront explained his vote. He stated he does not feel comfortable voting for the bill at this time; however, he would like to work with the other Senators and interested parties so that the measure will not harm the individuals who have a significant amount of equity in their homes. He said hopefully the stakeholders will be present at meetings to help craft this legislation in the future.

Senator Giffords explained her vote. She said there is a good possibility the problems can be resolved. However, she will have to vote "no" at this time.

Senator Soltero explained his vote. He stated some issues are still unresolved and he is concerned that individuals who have significant equity in their homes may lose their homes and equity invested. He said he will vote “no.”

Senator Tibshraeny explained his vote. He said he shares many of the same concerns. He said Senator Blendu will be working on a floor amendment to help resolve the problems of the consumer, and he will vote “aye” at this time to move the bill out of Committee to the next step.

Senator Blendu explained his vote. He said there are no “bad actors,” but there is something wrong with the process. He said as public policymakers, those issues need to be resolved to protect the consumers who are not able to attend these meetings. He said he will vote “aye” at this time to move the bill along.

The motion CARRIED by a roll call vote of 6-3-0 (Attachment 9).

HB 2145 – purchaser dwelling actions; applicability – DO PASS

Ms. Rigollet explained HB 2145 allows a seller to place a disclosure statement on the front of a contract that conspicuously indicates the location of dispute resolution procedures within the body of the contract.

Spencer Kamps, Deputy Director, Home Builders Association of Central Arizona, testified in support of HB 2145. He stated this is a clean-up measure including the requirement that a general disclosure statement be placed on the face of the contract indicating the language is located on a specific page of the contract.

**Senator Blendu moved HB 2145 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 9-0-0 (Attachment 10).**

There being no further business, the meeting adjourned at 10:53 a.m.

Respectfully submitted,

Nancy L. DeMichele
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate’s Office/Resource Center, Room 115.)